IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

MFA.No. 439 of 1998(A)

OP(HMA)15/1996 of THE SUB COURT, CHERTHALA
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APPELLANT: PETITIONER

N.RADHAKRISHNAN, S/O. NARAYAN THAMPI,
SREERAMASADANATHIL, CHERTHALA KIZHAKKUM MURI,
KOKKOTHAMANGALAM VILLAGE, CHERTHALA.

BY ADV. SRI.JOHN JOSEPH
SRI.G.N. NAIR

RESPONDENT: CR. PETITIONER

V.L.MINIKUTTY, D/O. LEELA,
VELIKKAKATHU VEETTIL,
CHERTHALA KIZHAKKUM MURI,
KOKKOTHAMANGALAM VILLAGE,
CHERTHALA.

BY PARTY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

M.F.A.No.439 of 1998-A

Dated: September 6, 2007

JUDGMENT

Harun-Ul-Rashid, J.

The petitioner in O.P (HMA) No.15/1996 on the file of the Sub Court, Cherthala, is the appellant in this M.F.A. The appellant as petitioner filed the above original petition for dissolution of his marriage with the respondent under sec.13(1) of the HIndu Marriage Act. The learned Sub Judge, after trial, held that the petitioner/husband has failed to satisfy the court that the respondent was treating the petitioner with mental and physical cruelty and that the respondent has deserted the petitioner and therefore the relief sought for in the petition for dissolution of marriage was denied and the petition was dismissed. Hence this appeal. The parties are referred to as the petitioner and the respondent.

2. The petitioner married the respondent as per the Hindu religious rites on 14.9.1991. They lived as husband and wife at the residence of the husband. The respondent gave birth to a child. According to the petitioner/husband, the respondent was not a dutiful wife, that he was subjected to physical and mental cruelty from his wife, that she attempted to commit suicide by pouring kerosene and set fire to her body and that due to the timely interference of the petitioner, he was able to obstruct her

from committing suicide. The petitioner also alleged that his wife had also tried to kill their child by catching hold of the child on his neck and that attempt failed due to his timely resistance. It is also alleged that his wife frequently threatened him that she would commit suicide. According to the petitioner, his life has become miserable due to the disorderly behaviour from the respondent. According to the petitioner, one fine morning the respondent left the residence of the petitioner and went to her parental home and she started continuously residing there with her parents. The petitioner further alleged that it is not possible for him to live with the respondent as husband and wife. On the grounds of cruelty and desertion, the above petition was filed praying for a decree of dissolution of marriage.

3. The respondent entered appearance before the court below and the allegations made against her in the petition for dissolution of marriage are denied. According to the respondent, it is at the instance of the appellant/petitioner that the respondent left the residence and started to reside with her parents. The allegations of mental and physical cruelty and misbehaviour are denied. It is also contended by the respondent that the allegations regarding the attempt to commit suicide and the attempt to kill the child are false allegations put forward to suit the convenience of the appellant/petitioner. In fact, according to her, she did not abandon the petitioner and left the residence of the petitioner, but she was taken to her

parents' house by the petitioner.

4. The trial court recorded the evidence of PWs.1 and 2 and Exts.A1 to A3 on the side of the petitioner/husband and of RW.1 on the side of the respondent. After analysing the evidence on record, the trial court came to the conclusion that the petitioner/husband failed to prove that the respondent was treating the petitioner with cruelty and that she had deserted the petitioner.

5. Admittedly, the marriage between the petitioner and the respondent took place on 14.9.1991. They resided together for a few years and the respondent left the petitioner's residence on 12.2.1996. As PW.1 the petitioner gave evidence stating that on two occasions the respondent attempted to commit suicide and her life was saved only due to his timely intervention by preventing the commission of the offence. He had also narrated the fact that on one occasion she tried to kill her own child. The trial court passed the observation that if the respondent had tried to committ suicide and to kill the child, certainly that will amount to physical and mental cruelty. The petitioner/husband had also given evidence stating that his wife insisted for their stay at her own residence and the petitioner was not amenable for such demand. Since the demand of the wife for residence of the parties at her house was not consented to by the petitioner, the respondent started all sorts of disorderly behaviour including exertion of cruelty, both physical and mental which made it impossible for

the petitioner to live with her. According to him, in spite of this disorderly behaviour, he resided with her for few years. But, the respondent/wife on her own will left the matrimonial home without assigning any reason and never came back.

6. The testimony of the petitioner as PW.1 was supported by the evidence of PW.2 who is a neighbour of the parties. PW.2 also deposed about the attempt to commit suicide by the respondent. He had also deposed that the respondent attempted to kill the child, which incident also he happened to witness. PW.2 further stated that he had helped the petitioner to break open the door by kicking and obstructed the suicide attempt. This witness also testifies that he knows the couple very closely and the respondent left the matrimonial home on her own free will.

7. On going through the evidence of the trial court, we have noticed that PW.2's evidence was discarded by the Sub Judge for trivial reasons. One of the reasons stated is that he was watching the examination of DW.1 (respondent) from the veranda of the court, that there was no need for him to watch the examination of DW.1 and therefore he is an interested witness. The trial court also held that since he is a toddy worker, he has to go for work almost all the hours except at night and therefore there is no possibility of this witness watching the incident which took place during day time. According to us this is also not a sufficient reason to disbelieve the evidence of PW.2. The trial court also stated various reasons for not

granting a decree for dissolution of the marriage. One reason stated is that the petitioner/husband did not apply for the custody of the child in spite of the incident referred to earlier, that is, the attempt made by the respondent/wife to kill the child. The court also finds fault with the petitioner for not taking his wife for treatment and for not complaining before the police authorities for her attempt to commit suicide.

8. We have examined the oral evidence adduced by the husband and the wife and P.W.2. According to us, the reason stated for discarding the evidence of PW.1 and disbelieving PW.2 are not correct. In the facts and circumstances brought out in the case and the evidence adduced in support thereof, we are of the view that the appellant/petitioner has made out a case for dissolution of the marriage on the grounds of cruelty and desertion. We have also noticed the fact that the parties are separated for the last more than 11 years. We had directed both parties to be present for making an attempt of reconciliation and mediation. The respondent/wife did not turn up even though she was asked to appear before court on two occasions. She refused to turn up on those two dates. We are of the opinion that the marriage is irretrievably broken and there is no chance, even remotest, for bringing them together. In the above facts and circumstances, we are constrained to hold that the appellant/petitioner is entitled to a decree for dissolution of the marriage on the grounds of cruelty and desertion.

In the result, the appeal is allowed. The judgment under appeal is set aside. The marriage between the appellant and the respondent is dissolved and decreed accordingly. There will be no order as to costs.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

M.F.A. No.439 OF 1998-A

JUDGMENT

6.9.2007